

# **PUBLIC ASSISTANCE ALTERNATIVE PROCEDURES PILOT PROGRAM – Permanent Work**



# **FEMA**

## **Frequently Asked Questions**

On January 29, 2013, President Obama signed into law the Sandy Recovery Improvement Act of 2013 (P.L. 113-2). This law amended the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) (Stafford Act) through the addition of Section 428 and authorizes alternative procedures for the Public Assistance (PA) Program permanent work funding. The law also authorizes the Federal Emergency Management Agency (FEMA) to implement the alternative procedures through a pilot program.

This document provides answers to frequently asked questions regarding the PA Alternative Procedures Pilot Program for Permanent Work (Permanent Work Pilot). For additional information, refer to the *Public Assistance Alternative Procedures Pilot Program Guide for Permanent Work (Permanent Work Pilot Guide)*.

### **General**

#### **1. What are the alternative procedures for permanent work?**

Section 428 authorized the following alternative procedures for permanent work subgrants:

- Subgrants Based on Fixed Estimates (required for participation)
  - FEMA Validation of Subgrantee-Provided Cost Estimates
  - Referral of Cost Estimates to an Expert Panel (subgrants with a Federal share of \$5 million or greater)
  - Consolidation of Multiple Fixed Subgrants into a Single Subgrant
  - Elimination of the Alternate Project Penalty (for in-lieu contributions)
  - Use of Excess Funds for Allowable Activities

#### **2. In which disasters can a Subgrantee use the Permanent Work Pilot?**

The Permanent Work Pilot was made available for any major disaster declared on or after May 20, 2013. Additionally, it is available on major disasters declared before May 20, 2013, if construction has not begun.

#### **3. How is “construction has not begun” defined?**

“Construction has not begun” is determined by the initiation of physical construction to repair or replace any of facilities within the subgrant. It does not include planning, design, demolition or site work.

#### **4. Does the Permanent Work Pilot only apply to large projects?**

Yes. The Permanent Work Pilot applies only to large projects (subgrants).

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**5. Is it optional for a Subgrantee to participate in the Permanent Work Pilot?**

Yes. Participation in the Permanent Work Pilot is voluntary.

**6. What are the deadlines for participation in the Permanent Work Pilot?**

The deadlines to participate in the Permanent Work Pilot are as follows:

Permanent Work Pilot Procedure	Declaration on or after May 20, 2013	Declarations prior to May 20, 2013 construction not started
Agree to fixed subgrant amount	9 months from date of declaration	February 20, 2014
Consolidate 2 or more fixed subgrants into a single subgrant	12 month from date of declaration	May 20, 2014

**7. How can a Subgrantee request participation in the Permanent Work Pilot?**

The Subgrantee should notify the Grantee and FEMA that it wants to participate in the Permanent Work Pilot. This would typically take place at the Kickoff Meeting. If the Subgrantee decides to participate, the Subgrantee will sign the *Public Assistance Alternative Procedures Pilot Program for Permanent Work Acknowledgement*.

**8. Can a Subgrantee elect to apply the Permanent Work Pilot to some of its subgrants and not others?**

Yes. The Subgrantee may elect to apply the Permanent Work Pilot on a subgrant-by-subgrant basis.

**9. How does a Subgrantee designate the subgrants for which it would like to apply the Permanent Work Pilot procedures?**

The Subgrantee signs the *Fixed Subgrant Agreement Letter* for each subgrant it elects to accept based on a fixed estimate. Once the Subgrantee agrees to a fixed subgrant, it cannot revert back to a subgrant funded based on actual costs.

### *Subgrants Based on Fixed Estimates*

**10. Can the fixed estimate include Direct Administrative Costs (DAC)?**

Yes. If the Subgrantee wishes to claim DAC, it must be included in the fixed estimate. The estimated DAC must be reasonable based on the level of effort of the tasks identified.

**11. Will FEMA adjust the fixed subgrant if the Subgrantee incurs additional costs due to Environmental Historic Preservation (EHP) requirements or unforeseen damages?**

No. FEMA will not increase the costs on a fixed subgrant.

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#### **12. What flexibilities are provided to a Subgrantee that agrees to a subgrant based on a fixed estimate?**

A fixed estimate subgrant is similar to an improved or alternate project. While pre-disaster function, design, capacity and condition determine the amount of FEMA eligible funding, a Subgrantee is not constrained from using this funding to complete a project with a different function, design or capacity. Additionally, the Subgrantee can retain any excess funds if actual costs are less than the fixed amount provided it uses them for an approved purpose.

#### *FEMA Validation of Subgrantee-Provided Estimates*

#### **13. What does FEMA require for a Subgrantee to provide its own estimate?**

- The estimate must directly correspond to the agreed upon detailed damage description and scope of work.
- FEMA will accept a Subgrantee's cost estimate if it has been prepared by a licensed professional engineer or other estimating professional, such as a licensed architect or certified professional cost estimator.
- The professional must certify that the estimate was prepared according to applicable standards of care for estimating construction costs.
- The estimate must be based on unit costs and include sufficient information to conduct a review.
- The Subgrantee should provide the estimate to FEMA at least 30 days prior to the nine (9)-month deadline.

#### **14. If a Subgrantee requests that the Expert Panel review an estimate, must the Subgrantee accept the Expert Panel's amount as the fixed amount?**

If a Subgrantee signs the Permanent Work Pilot Acknowledgement with intent to participate in the Permanent Work Pilot, it may request any subgrant with an estimate equal to or greater than \$5 million federal share be submitted to the Expert Panel for review. If the estimated amount deemed appropriate by the Expert Panel is less than the Subgrantee is willing to accept for a fixed subgrant, it may reverse its decision to apply the alternative procedures to that subgrant. In these cases, FEMA will obligate the subgrant based on the estimated amount determined by the Expert Panel and final funding will be based on actual costs in accordance with Title 44 CFR 206.205(b).

#### *Consolidated Subgrants*

#### **15. What additional flexibilities are provided to a Subgrantee that chooses to consolidate subgrants?**

A Subgrantee may share funding from the consolidated fixed subgrant to any of the facilities within the consolidated subgrant.

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**16. What costs are included in a consolidated subgrant?**

The fixed amount for the consolidated subgrant is the aggregate cost of the fixed subgrants that are being consolidated.

**17. Must the Subgrantee consolidate all of the sites within each single fixed subgrant?**

Yes. If a subgrant is consolidated, it must be consolidated in its entirety.

**18. Can a Subgrantee consolidate a completed project with an uncompleted project?**

Yes. A Subgrantee may consolidate any fixed subgrant regardless of the status of construction provided it is consolidated within the 12-month deadline.

### *Elimination of the Reduction for Alternate Projects*

**19. Does the elimination of the alternate project penalty apply to both public and private non-profit facilities?**

Yes. All of the alternative procedures apply to eligible public and private non-profit facilities.

**20. Is it necessary for a Subgrantee to obtain FEMA approval to use funds from a fixed subgrant towards an alternate project?**

Yes. If a Subgrantee wishes to use funds from a fixed subgrant towards an alternate project, it must notify FEMA in accordance with FEMA Policy 9525.13.

**21. Can a Subgrantee elect to apply the alternative procedures on an existing alternate project from a disaster declared prior to May 20, 2013?**

Yes, if construction has not begun on the alternate project, the Subgrantee may participate in the Permanent Work Pilot by signing the Permanent Work Pilot Acknowledgement and Fixed Subgrant Agreement Letter and FEMA will eliminate the reduction in funding for that alternate project subgrant.

### *Use of Excess Funds*

**22. If a Subgrantee completes the approved scope of work for less than the approved subgrant amount (i.e. experiences an underrun), can it keep the excess funds?**

Yes. The Subgrantee may retain excess funds for the approved purposes, as articulated in the *Permanent Work Pilot Guide*. These purposes include:

- Cost effective hazard mitigation activities that will reduce the risk of future disaster damage to facilities not damaged in the declared disaster (provided they would otherwise be eligible for PA Program funding) and toward hazard mitigation activities on other fixed subgrants.

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- Activities that improve future PA Program permanent work operations, such as training and planning for future disaster recovery operations.

#### **23. What does FEMA require when a Subgrantee determines it has excess funds?**

When a Subgrantee completes the scope of work on a fixed subgrant, it should provide an accounting of actual costs to FEMA, through the Grantee, within 90 days of completing the project to include its proposed scope of work tied to the excess funds and the project timeline. The Grantee and FEMA will review the request and process a new subgrant to document approval of the proposed use of the excess funds and an appropriate timeline for completion.

#### **24. Can a Subgrantee use excess funds for work on facilities not damaged by the declared disaster?**

Yes. The Subgrantee may use excess funds for hazard mitigation on facilities that are not damaged by the declared disaster provided the facilities would be otherwise eligible for PA Program funding. However, the Subgrantee may not use excess funds for the repair, restoration, or replacement of facilities that are not damaged in the declared disaster.

#### **25. Can a Subgrantee use excess funds to cover the non-Federal share of other PA Program-funded subgrants?**

No. Excess funds cannot be used to cover the non-Federal cost share for other PA Program-funded projects.

#### *Special Considerations*

#### **26. Can a fixed estimate subgrant include funds approved for Section 406 hazard mitigation even if the Subgrantee chooses to restore the facility in a different location or implement a repair that is fundamentally different than the original scope of work?**

Yes, FEMA may allow retention of approved Section 406 hazard mitigation funds on a case-by-case basis where prevention of future similar damage is proven to be of greater or equal benefit than that which would have been achieved with the approved mitigation scope of work in the fixed estimate.

#### **27. How will insurance proceeds be applied to fixed estimate subgrants?**

In calculating the fixed amount for a subgrant, FEMA will reduce funding by the amount of actual or anticipated insurance proceeds. This reduction for insurance will not be revised once the Subgrantee signs the *Fixed Subgrant Letter Agreement* unless the Subgrantee receives a greater amount in insurance proceeds than was originally reduced from the fixed estimate. This reduction is necessary to comply with Section 312 of the Stafford Act, which prohibits duplication of benefits. If the Subgrantee receives less insurance proceeds than the amount reduced on the subgrant, FEMA will not adjust the amount of the subgrant.

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- 28. Would obtain-and-maintain requirements apply to facilities for which fixed subgrants are used for something other than repairs to the original damaged facilities?**

Yes. Obtain and maintain requirements apply the same way they are applied under the standard PA Program.

- 29. Will FEMA review alternative procedure subgrants for compliance with EHP laws, regulations, and executive orders?**

Yes. FEMA must ensure compliance with all applicable EHP requirements before approving subgrants and before Subgrantees initiate work on the projects. FEMA will conduct additional EHP compliance reviews when fixed subgrant funds (either single or consolidated) are used for changes in scope of work that do not substantially conform to the existing design, function and location of the damaged facilities. The Grantee will notify FEMA of the proposed work and FEMA will determine whether additional EHP review must be conducted to ensure compliance before construction begins. In some instances, no further EHP review will be required for certain actions.

#### *Grants Management, Closeout and Appeals*

- 30. If a Subgrantee accepts a fixed subgrant, will it receive the total Federal share for that subgrant immediately after FEMA approves and obligates the subgrant?**

The Grantee is authorized to disburse the total Federal share of the subgrant funds to the Subgrantee after FEMA obligates funds.

- 31. Can the Subgrantee deposit subgrant funds in an interest-bearing account?**

No. If the Subgrantee deposits subgrant funds in an interest bearing account, the Subgrantee will promptly remit interest earned to FEMA.

- 32. Are Permanent Work Pilot subgrants subject to Strategic Funds Management?**

Yes. Permanent Work Pilot subgrants are still subject to Strategic Funds Management.

- 33. Are Grantees required to submit quarterly progress reports for Permanent Work Pilot subgrants?**

Yes. The requirement for quarterly reporting applies to Permanent Work Pilot subgrants.